

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Cr. No. 17-965 MCA
	)	
vs.	)	
	)	
KIRBY CLEVELAND,	)	
	)	
Defendant.	)	

**ORDER**

THIS MATTER is before the Court for approval of a Proposed Scheduling Order.

The Court's declaration of this case as complex on May 12, 2017 [Doc. 28], suspends the application of the Speedy Trial Act and its deadlines to this case. 18 U.S.C. § 3161(h)(7)(B)(ii).

Also on May 12, 2017, the Court directed the parties to meet and confer and draft a proposed scheduling order that will control the litigation of this case. The Court having considered the Proposed Scheduling Order and after further consideration of the Court's case management responsibilities, the Court finds that the following schedule is reasonably tailored to the facts and circumstances of this particular case.<sup>1</sup> The following deadlines are imposed:

Feb. 19, 2018:	Completion of non-expert Rule 16 discovery for all parties (Except for continuing duty to disclose); the United States shall make available to the Defendant by the time required by the applicable law all material for which disclosure is mandated by <i>Brady v. Maryland</i> , 373 U.S. 83 (1963);
March 5, 2018:	Defense discovery motions shall be filed; the United States to file its notice of intent with respect to the death penalty.

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<sup>1</sup> Depending on the decision of the Attorney General concerning review pursuant to Federal Death Penalty Act provisions, the Court may need to adjust this schedule accordingly.

March 19, 2018: Responses to defense discovery motions shall be filed;

April 2, 2018: Replies to discovery motions shall be filed;

April 23, 2018: The parties shall file pretrial motions on or before this date;  
The Government will file its request for alibi defense disclosure;  
Defense will provide reciprocal discovery pursuant to Rule 16(b)(1);

May 7, 2018: The parties shall file responses to pretrial motions on or before this date;

May 21, 2018: The parties shall file replies to pretrial motions on or before this date;

Aug. 20, 2018: The United States will produce all reports of results of examinations or tests that it has in its possession as of this date. If the government comes into possession of any other reports covered by Rule 16(a)(1)(F), it will produce them as soon as practicable;

Sept. 24, 2018: Parties shall file witness lists. The United States will designate expert witnesses;

Oct. 29, 2018: Defendant shall file objections to witness lists.  
Defendants shall designate expert witnesses and produce all reports of results of examination or tests that it has in its possession as of this date and will observe its continuing duty to disclose any additional reports that come into the defendants' possession;

Dec. 7, 2018: *Daubert* motions shall be filed; The United States shall file notice of intent to offer evidence under Fed. R. Evid. 404(b), 609, and 807; the United States shall make available to the Defendant by the time required by the applicable law all material for which disclosure is mandated by *Giglio v. United States*, 405 U.S. 150 (1972);

Dec. 21, 2018: Parties shall file objections pursuant to Fed. R. Evid. 404(b), 609, 807;

Jan. 7, 2019: Parties shall file replies to objections under Fed. R. Evid. 404(b), 609 and 807;

Jan. 21, 2019: The parties shall file motions in limine on or before this date;

Feb. 4, 2019: Parties shall file responses to motions in limine;

Feb. 18, 2019: Parties shall file replies to motions in limine;

May 11, 2019: Parties shall file exhibit lists and proposed *voir dire*;

May 25, 2019: Parties shall file objections to proposed *voir dire* and Exhibits;

June 8, 2019: The United States shall make available to the Defendant by the time required by the applicable law all material for which disclosure is mandated 18 U.S.C. §3500, and Rules 12(i) and 26.2 any previously undisclosed Jencks materials;

June 22, 2019: Jury Instructions shall be filed with the Court as early as practicable, but no later than June 22, 2019; Exhibit binders shall be delivered to the Court in chambers;

**IT IS FURTHER ORDERED** that a date certain for the Pretrial Conference/Call of Calendar and Pretrial motions hearings as well as trial and will be set by separate notice.

**IT IS ORDERED** the Court's standard discovery order and motion schedule is set aside in this case;

**IT IS FURTHER ORDERED** that the deadlines stated herein supersede those in the Court's Trial Preparation Instructions. (Doc. 25);

**IT IS FURTHER ORDERED** that the ends of justice served by establishing the deadlines set forth in this Scheduling Order outweigh the best interest of the public and the Defendants in a speedy trial. This case has been previously designated as complex pursuant to 18 U.S.C. § 3161(h)(7)(B)(ii). (Doc. 28).

**SO ORDERED** this 4th day of August, 2017, in Albuquerque, New Mexico.

  
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**M. CHRISTINA ARMIJO**  
**CHIEF UNITED STATES DISTRICT JUDGE**

Submitted by:

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/s/  
**MICHAEL D. MURPHY**

NIKI TAPIA-BRITO  
Assistant United States Attorneys

Approved by:

/s/  
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 THERESA M. DUNCAN  
 DONALD F. KOCHERSBERGER III  
 Counsel for Defendant Kirby Cleveland